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State of Vermont  
**Public Service Board**

November 22, 2013

**DOCKET FILE COPY ORIGINAL**

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NOV 27 2013

FCC Mail Room

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

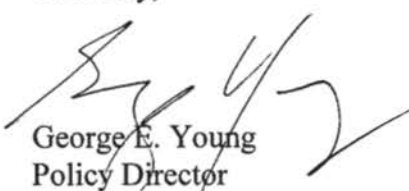
Re: *Connect America Fund*, WC Docket No. 10-90 and  
AU Docket No. 12-25  
Vermont Public Service Board Docket No. 7966  
Designation of VTel Wireless as Eligible Telecommunications Carrier

Dear Ms. Dortch:

Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the "Act") and 47 C.F.R. §§ 54.201 - 54.203, by Order issued July 11, 2012, the Vermont Public Service Board (PSB) granted a conditional eligible telecommunications carrier (ETC) designation to VTel Wireless, Inc. (VTW), for the purpose of establishing VTW's eligibility to participate in the Mobility Fund Phase 1 auction at the Federal Communications Commission (FCC) held on September 27, 2012. Please be advised that by Order issued November 21, 2013, in Docket 7966, the PSB granted VTW an unconditional ETC designation. Attached is a copy of the PSB's Order in Docket No. 7966.

Please feel free to contact me with any questions.

Sincerely,

  
George E. Young  
Policy Director

Attachment

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 **VERMONT**

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Received & Inspected

NOV 27 2013

FCC Mail Room

Docket No. 7966

Petition of VTel Wireless, Inc., for unconditional )  
designation as an Eligible Telecommunications )  
Carrier under the Telecommunications Act of 1996 )

Order entered: 11/21/2013

**ORDER GRANTING ETC DESIGNATION**

**I. SUMMARY**

For a telecommunications carrier to receive federal universal service support, it must first be designated as an "Eligible Telecommunications Carrier" ("ETC"). Under federal law, the Vermont Public Service Board ("Board") is responsible for designating ETCs in Vermont. Consistent with a stipulation (the "Stipulation") entered into by VTel Wireless, Inc. ("VTel Wireless" or the "Company"), and the Vermont Department of Public Service ("Department" or "DPS") this Proposal for Decision ("PFD") recommends that the Board, subject to certain conditions, designate VTel Wireless as an ETC within the census blocks specified in Attachment A, for a period ending five years from the date of this Order.<sup>1</sup>

**II. BACKGROUND AND PROCEDURAL HISTORY**

On July 3, 2012, VTel Wireless petitioned the Board for a conditional designation as an ETC for the purpose of establishing eligibility to participate in the Mobility Fund Phase I auction

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1. VTel Wireless did not request a specific designation period in its petition, but instead sought ETC designation for an indefinite term. In the event the Board determines that an indefinite term is not appropriate, VTel Wireless has requested designation for a term of no less than five years. See letter from Nancy S. Malmquist, Esq., to Susan M. Hudson, Clerk of the Board, dated August 9, 2013, at 6. I am unaware of any time in which the Board has granted an indefinite ETC designation. Accordingly, my recommendation is for a five-year designation period.

at the Federal Communications Commission ("FCC") that was to be held on September 27, 2012.<sup>2</sup>

The FCC stated that in Phase I of the Mobility Fund it would provide up to \$300 million in one-time support to accelerate the deployment of next generation 3G or better networks for mobile voice and broadband services in unserved areas. In late June of 2012, the FCC published an updated list of census blocks that were eligible for Mobility Fund Phase I support, including certain census blocks located in Vermont.<sup>3</sup>

To participate in the Phase I auction, a carrier had to be designated as an ETC for all census blocks for which it intended to submit a bid, and the carrier had to be designated at the time it filed its initial application for participation in the auction. VTel Wireless sought to participate in the FCC auction in order to obtain support to deploy mobile voice and broadband services to certain unserved areas of Vermont.<sup>4</sup>

On July 11, 2012, the Board issued an Order conditionally designating VTel Wireless as an ETC for those Vermont census blocks previously identified by the FCC.<sup>5</sup> The Board's Order also stated that if VTel Wireless was awarded Mobility Phase I support as a result of the auction, "the Company shall file a new petition with the Board by November 1, 2012, for an unconditional ETC designation."<sup>6</sup>

On October 3, 2012, the FCC announced the winners of the Mobility Fund Phase I support and VTel Wireless was awarded support for certain census blocks within Vermont.<sup>7</sup>

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2. *See Petition of VTel Wireless, Inc.*, Docket No. 7890, Order of 7/11/12 at 1.

3. Docket No. 7890, Order of 7/11/12 at 2.

4. Docket No. 7890, Order of 7/11/12 at 2.

5. Docket No. 7890, Order of 7/11/12 at 12-14.

6. Docket No. 7890, Order of 7/11/12 at 13.

7. Petition at 2.



On November 1, 2012, VTel Wireless filed with the Board its petition, along with the prefiled testimony and supporting exhibits of Michel Guite,<sup>8</sup> seeking unconditional ETC designation pursuant to § 214(e)(2) of the Telecommunications Act of 1934, as amended (the "Act") and Section 54.201 of the rules of the FCC.

On January 31, 2013, I convened a prehearing conference. Appearances were entered by Megan Ludwig, Esq., for the Department, and Nancy Malmquist, Esq., Downs Rachlin Martin PLLC, for VTel Wireless.

On February 4, 2013, I issued a Prehearing Conference Memorandum and Scheduling Order establishing a schedule for initial discovery, a deadline for intervention motions, and a due date for the Department to prefile testimony and the parties to propose a schedule for the balance of the proceeding.<sup>9</sup>

On February 8, 2013, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), filed with the Board a motion for intervention as of right under PSB Rule 2.209(A), or in the alternative, for permissive intervention under PSB Rule 2.209(B).<sup>10</sup>

By Order dated February 20, 2013, I granted Fairpoint's motion to intervene on a permissive basis.<sup>11</sup>

On April 18, 2013, VTel Wireless and the Department filed the Stipulation with the Board, stating their agreement that the Board should, subject to certain conditions, designate VTel Wireless as an ETC in the areas in which it was awarded Mobility Fund Phase I support.<sup>12</sup>

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8. The prefiled testimony of Michel Guite and Exhibits VW-1 through VW-4 are hereby admitted into the evidentiary record. Because the prefiled testimony and exhibits were filed on November 1, 2012, any objections to their admission would now be untimely. *See* PSB Rule 2.216(C).

9. Docket 7966, Order of 2/4/13 at 1-2.

10. Fairpoint had intended to file its motion with the Board by hand delivery on February 8, 2013, the deadline for filing motions to intervene. However, due to inclement weather that day, I accepted Fairpoint's motion as timely filed in electronic format on February 8, with the hard copy to follow the next business day.

11. Docket 7966, Order of 2/20/13 at 1-2.

12. I hereby admit the Stipulation into the evidentiary record. Any party that wishes to object to the admission of  
(continued...)

On July 12, 2013, VTel Wireless filed a consensus Proposal for Decision ("consensus PFD") representing that the consensus PFD had been prepared by both VTel Wireless and the Department.

On July 29, 2013, the Clerk's office issued a memorandum containing a number of questions from Board staff regarding the contents of the Stipulation and consensus PFD.

On August 7, 2013, Fairpoint filed comments on the consensus PFD, asking that the Board impose a number of conditions on any approval of VTel Wireless' request for ETC designation.

On August 9, 2013, VTel Wireless and the Department each filed responses to the July 29, 2013, staff questions.

On August 19, 2013, VTel Wireless filed a response in opposition to the conditions proposed by Fairpoint in Fairpoint's August 7, 2013, comments.

On August 28, 2013, I convened a status conference to discuss in more detail the responses to staff questions that had been filed by both the Department and VTel Wireless. During that status conference, I posed a number of questions to both VTel Wireless and the Department and established a deadline for written responses to those questions, including whether the two parties continued to support both the Stipulation and consensus PFD in light of some differences of opinion on a number of issues as reflected in their August 9, 2013, responses to staff questions.

On September 20, 2013, VTel Wireless and the Department each filed responses to the questions posed during the August 28, 2013, status conference. Those responses indicate that both parties continue to support the Stipulation and consensus PFD in spite of disagreement over certain issues, which will be discussed below. In the Stipulation, VTel Wireless and the Department agree that VTel Wireless should be designated an ETC in the areas in which it was awarded Mobility Fund Phase I support. VTel Wireless and the Department further agree that all outstanding issues have been addressed and that no hearing is needed.

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12. (...continued)  
the Stipulation must file its objections and reasons therefore when it files its comments on this PFD.

### III. THE LEGAL STANDARD

Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support." Accordingly, before a "telecommunications carrier"<sup>13</sup> may receive federal universal service support, it must first be designated as an ETC.<sup>14</sup> The Board has authority under the Act to designate ETCs in Vermont. The Act and its implementing regulations prescribe many of the standards for such designations.<sup>15</sup>

A carrier seeking designation as an ETC must show that it offers "voice telephony service." Voice telephony service includes four supported services: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to emergency services; and (4) toll limitation services to qualifying low-income consumers.<sup>16</sup> These services must be offered throughout the service area for which the designation is received, either using the ETC's own facilities or a combination of its own facilities and resale of another carrier's services. The ETC must also advertise the availability of these services and the charges therefor using media of general distribution.<sup>17</sup>

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13. "Telecommunications carrier" is defined by 47 C.F.R. § 54.5.

14. 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

15. The standards are found generally in 47 C.F.R. § 54.101, *et seq.* On February 6, 2012, the FCC issued its Lifeline Reform Order, which substantially revised the rules governing the Lifeline program. *See Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. No. 11-42 *et al.*, FCC 12-11 (rel. Feb. 6, 2012) ("Lifeline Reform Order").

16. 47 C.F.R. §§ 54.101(a) and (b). In 2011, the FCC revised its list of supported services and amended 47 C.F.R. § 54.101 to specify that "voice telephony service" is supported by federal universal service support mechanisms. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("CAF Order").

17. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).



Additionally, prior to designating a competitive telecommunications carrier as an ETC, the Board must first find that such designation is "consistent with the public interest, convenience and necessity."<sup>18</sup> In a 2005 order, the FCC interpreted this requirement to mean that designation must serve the public interest, and established an analytical framework it would use in reviewing ETC applications to ensure designations were in fact in the public interest.<sup>19</sup> In that same order, the FCC also created additional minimum eligibility requirements that applicants must meet before receiving ETC designation,<sup>20</sup> strengthened annual reporting requirements for ETCs,<sup>21</sup> and encouraged states to implement the same requirements and analytical framework in determining whether to designate a carrier as an ETC when applications are reviewed by state commissions.<sup>22</sup>

#### IV. POSITIONS OF THE PARTIES

VTel Wireless and the Department have both signed the Stipulation supporting Board designation of VTel Wireless as an ETC, subject to certain conditions enumerated in the Stipulation, in the areas in which VTel Wireless was awarded Mobility Fund Phase I support.

Fairpoint did not sign the Stipulation but, as noted above, did provide comments requesting that the Board impose certain conditions on any ETC designation of VTel.

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18. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

19. See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005) at ¶ 3 ("Guidelines Order").

20. Guidelines Order at ¶ 2.

21. Guidelines Order at ¶ 4. The strengthened annual reporting requirements have been codified at 47 C.F.R. § 54.313 and are now applicable to all ETCs, including those designated by state commissions, except for ETCs that solely receive Mobility Fund Phase I support. 47 C.F.R. § 54.313(k). However, as part of its Lifeline Compliance Plan, VTel Wireless has committed to meet a number of these strengthened annual reporting requirements, including information related to corporate identity, Lifeline service plans, service outages, complaints received, certification of compliance with applicable consumer protection standards, and certification of the Company's ability to remain functional in emergency situations. Exh. VW-3 at 6. As a recipient of Mobility Fund Phase I support, VTel Wireless will be subject to other numerous specific reporting requirements imposed by the FCC when it created the fund. See 47 C.F.R. § 54.1009. Additionally, if VTel Wireless receives any other form of high-cost support, it will be required to comply with the annual reporting requirements set forth in 47 C.F.R. § 54.313. See CAF Order, ¶¶ 470-74.

22. Guidelines Order at ¶¶ 1, 3 and 4.

## V. COMPANY BACKGROUND

### Findings

1. VTel Wireless holds 700 MHz and other licenses to provide wireless services in Vermont. It is the recipient of funding from the Rural Utilities Service under the Broadband Initiatives Program, which is being used to deploy a state-of-the-art communications network in Vermont. Pet. at 1.

2. VTel Wireless has the necessary authority to transact business in Vermont and holds a Certificate of Public Good issued by the Board on August 17, 2011, to operate throughout the state of Vermont. Pet. at 1; Michel Guite, VTel ("Guite") pf. at 5.<sup>23</sup>

3. VTel Wireless is currently regulated as a commercial mobile radio services ("CMRS") provider that provides services on a common carrier basis. Guite pf. at 5.

## VI. THE REQUIRED SERVICES

To be designated an ETC, VTel Wireless must demonstrate that it offers: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to emergency services; and (4) toll limitation services to qualifying low-income consumers,<sup>24</sup> using either its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>25</sup> Each of the four required services is considered separately below.

VTel Wireless' ETC application is unique in Vermont in that the network that will serve the areas for which the Company seeks designation has not yet been constructed; construction of the network will only occur after VTel Wireless has been unconditionally designated an ETC for

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23. See also *Petition of VTel Wireless, Inc., for a certificate of public good*, CPG No. 941-CM, Order of 8/17/11 at 2.

24. 47 C.F.R. §§ 54.101(a) and (b).

25. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).



the areas in question and has received its Mobility Fund Phase I support. Accordingly, the findings, discussion and recommended conditions that follow take this unique scenario into account. Additionally, VTel Wireless and the Department have agreed that, "Before VTel Wireless provides voice telephony service under this ETC designation, it shall submit a filing to the Board demonstrating that VTel Wireless will be in compliance with all its ETC obligations."<sup>26</sup> I believe that this a necessary and appropriate requirement given the unique circumstances of this case, and I recommend the Board impose it as a specific condition of approval.

#### **A. Voice Grade Access to the Public Switched Network**

##### **Findings**

4. VTel Wireless will meet the requirement to provide voice-grade access to the public-switched network by providing mobile voice communications service for telephone calls that can be initiated or terminated on VTel Wireless' 4G/LTE data network. Guite pf. at 5.

5. The 4G/LTE data network being deployed by VTel Wireless in 2013 will include two core network components manufactured by Ericsson: (1) the 4G/LTE "Evolved Packet Core;" and (2) the 4G/LTE "IMS" (IP Multimedia Subsystem) Core. Stipulation at 2.

6. VTel Wireless will meet the voice telephony obligations of ETC designation by offering a service that is not dependent upon best-effort, over-the-top Voice Over Internet Protocol ("VoIP"). If VoIP is employed, it will be supported by Internet Protocol Quality of Service throughout the VTel.Wireless network. Stipulation at 2.

##### **Discussion**

Under its rules as amended by the CAF Order, the FCC does not provide a definition for what constitutes voice grade access and relies on certifications from ETC applicants that they provide such access.<sup>27</sup> Given the apparent lack of a specific definition for what constitutes voice

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26. Stipulation at 2.

27. 47 C.F.R. § 54.101 (as amended). See e.g., *In the Matter of Telecommunications Carriers Eligible for Universal Service Support i-wireless, LLC Amended Petition for Designation as an Eligible Telecommunications* (continued...)

grade access, VTel Wireless' representations that it will provide such access using the network to be constructed with the Mobility Fund Phase I support it will receive, and the agreement among VTel Wireless and the Department detailing how voice grade access will be implemented, I conclude that VTel Wireless meets this requirement.

### **B. Minutes of Use for Local Service Provided at no Additional Charge**

#### **Findings**

7. VTel Wireless will meet the local usage requirement by providing an amount of local usage free of charge in each universal service rate plan. Guite pf. at 5.

#### **Discussion**

Because VTel Wireless has not yet constructed the network over which it will be providing the services covered by the requested ETC designation, VTel Wireless has apparently not yet developed specific service offerings that confirm compliance with this requirement. However, VTel Wireless has affirmatively committed to meet this requirement once it begins offering service over the network that will serve the area covered by its ETC designation by providing an amount of local usage free of charge in each universal service rate plan. I conclude that VTel Wireless' commitment to provide such usage is sufficient to meet this requirement for the purpose of ETC designation. However, as a condition of designation, I recommend the Board require VTel Wireless to file rate plan information confirming its compliance with this requirement once its ETC-designated voice telephony service offerings are developed and prior to the time it offers voice telephony service under its ETC designation.

### **C. Access to Emergency Services**

#### **Findings**

8. VTel Wireless will meet the requirement to provide access to emergency services by enabling its voice/data customers to call 911. Guite pf. at 5.

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27. (...continued)  
*Carrier et al.* WC Docket No. 09-197 (rel. June 13, 2012) at ¶¶ 7, 13.



Discussion

As an ETC, VTel Wireless must provide "access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems."<sup>28</sup> The State of Vermont has implemented enhanced 911 ("E-911") services.

VTel Wireless has committed to meeting its access to emergency services obligation and the Department supports a conclusion by the Board that this obligation will be met. However, the Department and VTel Wireless disagree over the nature of that obligation.

The Department believes that VTel Wireless must meet the Phase II E-911 requirements applicable to CMRS providers as set forth in 47 C.F.R. § 20.18(e). Citing to 47 C.F.R. § 54.201, the Department reasons that VTel Wireless must function as a common carrier in order to receive its ETC designation, and, as a common carrier, VTel Wireless must meet the E-911 obligations of a CMRS provider.<sup>29</sup> The Department further contends that VTel Wireless must meet the CMRS Phase II obligations by virtue of requirements imposed by the FCC on the use of the 700MHz license held by VTel Wireless.<sup>30</sup>

VTel Wireless disagrees with the Department and states that its E-911 obligations for calls made over its new network will be governed by 47 C.F.R. § 9.3, which establishes E-911 requirements for interconnected VoIP providers, and which are somewhat less stringent than those applicable to CMRS carriers with respect to the provision of location information for the party calling 911. VTel Wireless also notes that the FCC is currently considering the issue of location information requirements for interconnected VoIP carriers and that clarification of this

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28. 47 C.F.R. § 54.101(a).

29. Letter from Megan Ludwig, Esq., to Susan M. Hudson, Clerk of the Board, dated August 9, 2013, ("Department 8/9/13 letter") at 1-2; letter from Megan Ludwig, Esq., to Susan M. Hudson, Clerk of the Board, dated September 20, 2013 ("Department 9/20/13 letter") at 1-2.

30. Department 9/20/13 letter at 1-2 (quoting *In the Matter of Serv. Rules for the 698-746, 747-762 & 777-792 MHz Bands Revision of the Commissions Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys. Section 68.4(a) of the Commissions Rules Governing Hearing Aid-Compatible Telephones Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, & 90 to Streamline & Harmonize Various Rules Affecting Wireless Radio Servs. Former Nextel Commc'ns*, 22 F.C.C. Rcd. 8064, 8112 (2007)).



issue may be forthcoming prior to the time that the Company will begin providing service over the new network.<sup>31</sup>

While the Department and VTel Wireless apparently disagree over the exact nature of the E-911 services that VTel Wireless will be required to deploy over its new network, both parties believe that the Board should find that VTel Wireless will meet the applicable obligations and that the Board need not make a determination regarding what those obligations are at this time.

I agree with the Department and VTel Wireless that the commitment by VTel Wireless to meet its applicable E-911 obligations as an ETC when providing service over its future network is sufficient for the Board to make the requisite finding for the purpose of granting the requested ETC designation. However, as a condition of designation, I recommend that the Board require VTel Wireless, prior to the time it begins to provide voice telephony service over the new network, to file with the Board an explanation of what it believes to be the applicable governing regulations for its provision of E-911 services over that network and its reasons therefore, along with a reaffirmation of its commitment to meet those obligations. In the event the Department continues to disagree with VTel Wireless over the nature of the Company's E-911 obligations, it may request that the Board resolve the issue at that time.

#### **D. Toll Limitation for Qualifying Low-Income Customers**

##### **Findings**

9. Toll limitation means both toll blocking and toll control, or, if a carrier is not capable of providing both toll blocking and toll control, then toll limitation is defined as either toll blocking or toll control. Upon implementing an applicable service offering in the future that distinguishes between toll and non-toll calls, VTel Wireless will offer toll limitation to qualifying low-income consumers. Guite pf. at 5-6.

##### **Discussion**

In its Lifeline Reform Order, the FCC eliminated the requirement that ETCs offer toll limitation services for qualifying low-income customers where the carrier serves consumers who

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31. Letter from Nancy S. Malmquist, Esq., to Susan M. Hudson, Clerk of the Board, dated August 9, 2013, at 1-3.

subscribe to service plans that offer a set amount of domestic minutes (local or toll calls) each month, which by definition provide a mechanism for low-income households to manage monthly telecommunications expenditures.<sup>32</sup> VTel Wireless has apparently not yet developed the service plans that it will offer on its new network. To the extent VTel Wireless' new voice telephony offerings consist of a set amount of domestic minutes that do not distinguish between toll and non-toll calling, then VTel Wireless need not offer toll limitation services to qualifying low-income customers for those plans. In the event that VTel Wireless does offer plans over its new network that distinguish between toll and non-toll calls, VTel Wireless has committed to offering toll limitation services to qualifying low-income customers. Accordingly, I recommend the Board find that VTel Wireless meets this requirement. However, as a condition of designation, I recommend the Board require VTel Wireless to file with the Board a statement detailing its plans for complying with this requirement once it has developed the voice telephony service plans to be offered over its new network, and prior to the time that it begins providing such service.

## VII. LIFELINE

### Findings

10. VTel Wireless will comply with the FCC's Lifeline Reform Order of February 6, 2012, and its Duplicative Process Order of 2011. Guite pf. at 6.

11. VTel Wireless will offer a customer qualifying for Lifeline service, who has a residential E-911 address within the ETC-designation area, a stand-alone voice service rate plan that includes at least 100 minutes per month for no additional fee. Stipulation at 3.

12. VTel Wireless will comply with all applicable federal and state laws governing Lifeline service, including Board Rules 7.607, 7.608, 7.610, 7.618 and 7.619 to the extent those rules are applicable to it. Stipulation at 3.

13. VTel Wireless will participate in Vermont quarterly Lifeline Committee meetings. Stipulation at 4.

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32. Lifeline Reform Order at ¶ 230; 47 C.F.R. § 54.401(a)(2).

14. VTel Wireless will also comply with all applicable reporting requirements, including those set forth in the VTel Wireless Lifeline Compliance Plan. Exh. VW-3.

15. Because the Vermont Department of Children and Families ("DCF") and the Vermont Department of Taxes handle applications and certification for Lifeline eligibility in the state, a Vermont ETC must not seek reimbursement for providing Lifeline service unless the carrier has received from DCF a copy of the subscriber's certification. Exh. VW-3 at 1-2.<sup>33</sup>

16. VTel Wireless will work with DCF and the Department of Taxes to verify consumer eligibility for Lifeline services consistent with 30 V.S.A. § 218(c). Stipulation at 4.

17. To ensure compliance with this requirement, VTel Wireless will document the date the certification form is received from DCF and will keep a copy of such form for as long as the subscriber receives Lifeline service from VTel Wireless. Exh. VW-3 at 2.<sup>34</sup>

18. In addition, VTel Wireless will certify, as part of each reimbursement request, that it is in compliance with all of the FCC's Lifeline rules and has received a valid certification form for each subscriber for whom it is seeking reimbursement. Exh. VW-3 at 2.<sup>35</sup>

19. VTel Wireless will submit to the Universal Service Administrative Company ("USAC") its FCC form 497 on the eighth day of each month in order to be reimbursed the same month consistent with FCC requirements. Exh. VW-3 at 2.<sup>36</sup>

20. Also, consistent with FCC rules, VTel Wireless will de-enroll any subscriber within five business days of receiving notice from DCF that the subscriber was unable to be recertified. VTel Wireless will also file FCC Form 555 by January 31 of each year, which is expected to include information regarding subscribers who are de-enrolled from the Lifeline program. Exh. VW-3 at 3.<sup>37</sup>

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33. See also 47 C.F.R. §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii).

34. See also 47 C.F.R. § 54.417(a).

35. See also 47 C.F.R. § 54.407(d).

36. See also Lifeline Reform Order at ¶ 303.

37. See also 47 C.F.R. §§ 54.405(e)(1) and 54.416(b); Lifeline Reform Order at ¶ 132.



21. VTel Wireless will not consider a prepaid wireless subscriber activated until that subscriber activates 'VTel Wireless' service by completing an outbound call at the time of enrollment. Exh. VW-3 at 3.<sup>38</sup>

22. VTel Wireless will provide a de-enrollment notice to subscribers who have not used their service for 60 days. VTel Wireless will also provide notice to subscribers, after 30 days of non-use, that failure to use the Lifeline service within a 30-day period will result in de-enrollment. VTel Wireless will report annually to the FCC and the Board the number of subscribers de-enrolled for non-usage by month. Exh. VW-3 at 4.<sup>39</sup>

23. To comply with the FCC rule that eligible consumers can only receive one Lifeline-supported service per household, VTel Wireless will periodically review its records to ensure it is providing support to only one subscriber per household. If VTel Wireless determines it is providing Lifeline-supported service to multiple subscribers at a single address, it will contact DCF. VTel Wireless will de-enroll a subscriber who fails to provide DCF with the requisite information to confirm compliance with the one-per-household rule. Similarly, if a prospective subscriber seeks to obtain service at an address where VTel Wireless is already serving a subscriber, VTel Wireless will notify DCF and receive proper certification prior to providing Lifeline service to the prospective customer. Exh. VW-3 at 4-5.

24. All VTel Wireless personnel interacting with existing and potential Lifeline customers will undergo training regarding the eligibility and certification requirements in the Lifeline Reform Order and VTel Wireless' Compliance Plan, and personnel will emphasize the one Lifeline service per household restriction in any direct sales contacts with potential customers. Exh. VW-3 at 5.

25. VTel Wireless will submit an annual certification to USAC that the Company has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services, that it is in compliance with all federal Lifeline certification requirements and that it has obtained a valid certification form for each subscriber for whom the carrier seeks

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38. See also Lifeline Reform Order at ¶ 257.

39. See also 47 C.F.R. § 54.405(e)(3); Lifeline Reform Order at ¶ 257.

reimbursement. VTel Wireless will also provide the results of its annual recertification process on an annual basis to the FCC, USAC and the Board. Exh. VW-3 at 5-6.<sup>40</sup>

26. VTel Wireless will also comply with the additional reporting requirements of the Lifeline Reform Order regarding information about the company and its affiliates, terms and conditions for its Lifeline plans, information regarding service outages and customer complaints, certification of compliance with applicable service quality standards and consumer protection rules, and certification that the company can function in emergency situations. Exh. VW-3 at 6.

27. VTel Wireless will include the required information regarding its Lifeline service on all marketing materials describing the service. VTel Wireless will engage in consumer outreach and marketing efforts to inform consumers about Lifeline and the availability of wireless Lifeline service. Exh. VW-3 at 6-7; Stipulation at 4.

28. VTel Wireless will cooperate with federal and state regulators to prevent waste, fraud and abuse. Exh. VW-3 at 7-8.

29. VTel Wireless agrees that it will file a petition, within 12 months of receiving ETC designation in the census blocks with respect to which it was awarded Mobility Fund Phase I support, requesting designation state-wide as either a full Eligible Telecommunications Carrier or a Lifeline-only Eligible Telecommunications Carrier. Stipulation at 3.

#### Discussion

FCC rules require ETCs to offer Lifeline to their customers and to advertise the availability of the program. The evidence of record supports a conclusion that VTel Wireless will offer Lifeline to qualifying customers upon designation as an ETC, and that it will engage in consumer outreach and marketing efforts to inform consumers about Lifeline and the availability of wireless Lifeline service. However, no specific information is provided regarding the type of marketing and outreach in which VTel Wireless will engage. Consistent with prior ETC designation orders, I recommend the Board require VTel Wireless to file within 60 days of any designation order a plan that describes the marketing and outreach efforts it will utilize in advertising the availability of its Lifeline service, and explains how it will be effective in

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40. See also 47 C.F.R. § 54.416(a) and (b); Lifeline Reform Order at ¶¶ 132, 148.



reaching eligible consumers. The marketing plan must also describe whether VTel Wireless' Lifeline information is clearly displayed on its website along with other services, VTel Wireless' utilization of multiple outreach methods, the frequency of its outreach efforts, whether it will provide outreach materials to relevant community institutions, whether it will advertise in multiple languages if appropriate, that VTel Wireless uses clear and plain language when describing its Lifeline offerings, and possible cooperation among ETCs for the joint production, placement and use of outreach materials. Additionally, no later than April 15 each year, VTel Wireless should be required to file an annual certification describing the marketing and outreach efforts it undertook the preceding year.

As part of its commitment to meet its Lifeline obligations, VTel Wireless has made a number of commitments as specified in the preceding findings and I recommend that the Board impose compliance with those commitments as a condition of ETC designation for the Company. Additionally, I note that the Department and VTel Wireless have agreed that VTel Wireless will "comply with all applicable federal and state laws governing Lifeline service, including board rules 7.607, 7.608, 7.610, 7.618 and 7.619 to the extent those rules are applicable to it."<sup>41</sup> While this is an appropriate commitment, there is no explanation for why the applicability of the Board Rules cited in the Stipulation are limited to the provision of Lifeline service. I recommend that the Board not so limit the applicability of these Rules when imposing compliance with them as a condition of ETC designation.

Lastly, VTel Wireless has committed to offering to qualifying Lifeline customers with a residential E-911 address within the ETC-designation area, a stand-alone voice service rate plan that includes at least 100 minutes per month for no additional fee. VTel Wireless filed along with its petition Exhibit VW-4, which purports to be a description of the Company's Lifeline service offering.<sup>42</sup> While this exhibit explains the current dollar value of the monthly Lifeline credit, and describes certain eligibility requirements and Company responsibilities, it does not

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41. Stipulation at 3.

42. VTel Wireless submitted Exhibit VW-4 in lieu of a Lifeline tariff because the Company is not subject to tariff filing requirements at the state level. Guite pf. at 12.



specify the minimum 100 minutes of free use nor disclose any other terms and conditions of service that may result in fees to the end-user. Therefore, I recommend the Board require, as a condition of designation, that VTel Wireless file a complete description of its Lifeline service offerings demonstrating compliance with applicable regulations, as well as the Company's commitments set forth in the Stipulation, prior to providing voice telephony service on the network to be built with the Mobility Fund Phase I proceeds.

### **VIII. OFFERING SERVICES THROUGHOUT THE SERVICE AREA**

#### **Findings**

30. VTel Wireless will operate its own cell sites and associated telecommunications facilities in Vermont, using radio licenses issued by the FCC, enabling it to provide universal service throughout its proposed ETC service area using its own facilities as well as a combination of services from other carriers, consistent with applicable requirements of the Mobility Fund. Guite pf. at 6.

31. VTel Wireless commits to provide all of the supported services throughout its designated service area, consistent with all applicable requirements of the Mobility Fund, including demonstration of coverage commitments using the drive test methodology outlined in FCC Auction 901. Guite pf. at 6-7.

32. VTel Wireless will offer voice telephony service, including a rate plan for stand-alone voice service, consistent with all applicable requirements of the FCC and the Board. For services offered with Mobility Fund Phase I support, VTel Wireless will comply with all applicable FCC requirements, including, but not limited to, those related to reasonably comparable rates. Stipulation at 3.

33. In advance of providing service, VTel Wireless will publish a non-proprietary map on its website showing where it understands applicable service will be available in the areas in which it was awarded Mobility Fund Phase I support. Stipulation at 3.

#### **Discussion**

The four supported services must be offered throughout the service area for which ETC designation is received. VTel Wireless will accomplish this through use of its own facilities as

well as a combination of services from other carriers, consistent with applicable requirements of the Mobility Fund. Accordingly, VTel Wireless meets this requirement.

## **IX. ADVERTISING**

### **Findings**

34. VTel Wireless will advertise the availability of and charges for its service offerings using media of general distribution and will undertake outreach initiatives to increase consumer awareness of VTel Wireless' service offerings. Guite pf. at 7; Stipulation at 4.

### **Discussion**

The Act and FCC rules condition ETC designation on the carrier advertising the availability of the four supported services.<sup>43</sup> The FCC's rules also require an ETC to "publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."<sup>44</sup> VTel Wireless' commitment to advertise the four supported services meets the first of these requirements. Provided that the Board adopts the earlier recommended condition for VTel Wireless to file a Lifeline marketing plan and annual certification of its Lifeline marketing and outreach efforts, the second of these requirements will be met as well.

## **X. MINIMUM ELIGIBILITY REQUIREMENTS**

The FCC has created certain additional minimum eligibility requirements that applicants must meet before receiving ETC designation from the FCC. Those requirements include: (1) certification that a carrier will comply with the service requirements applicable to the support that it receives; (2) submission of a five-year plan that describes with specificity proposed improvements or upgrades to the carrier's network throughout its proposed service area; (3) a demonstration of a carrier's ability to remain functional in emergency situations; and (4) a

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43. 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201.

44. 47 C.F.R. § 54.405(b).

demonstration that a carrier will satisfy applicable consumer protection and service quality standards.<sup>45</sup>

### Findings

35. VTel Wireless has committed to provide the supported services to qualifying low income consumers consistent with applicable rules, including the requirements for providers that have been awarded Mobility Fund Phase I support. Guite pf. at 10.

36. VTel Wireless will be able to remain functional in emergency situations as required by the FCC's rules. This finding is supported by findings 37 through 40, below.

37. VTel Wireless' network will include a reasonable amount of back-up power to ensure functionality when power is out. In particular, there will be fixed and portable backup power generators at some network locations that can be deployed in emergency situations. The majority of sites not equipped with fixed generators will have battery back-up systems installed to maintain service in the event of a widespread power outage. Guite pf. at 10-11.

38. VTel Wireless will have the ability to re-route traffic around damaged facilities. Guite pf. at 10.

39. VTel Wireless will have the capability to manage traffic spikes resulting from emergency situations. Guite pf. at 10.

40. VTel Wireless will have a network control center that will monitor network status and that can coordinate responses on a 24/7 basis with responsible personnel. Guite pf. at 11.

41. VTel Wireless has committed to meeting applicable consumer protection and service quality standards, and as required by the Board's July 11, 2012, Order in Docket No. 7890, has committed to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service. Guite pf. at 10.

### Discussion

VTel Wireless has demonstrated that it will meet three of the four minimum eligibility requirements. Specifically, VTel Wireless has demonstrated that it will comply with the service

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45. 47 C.F.R. §54.202(a)(1)-(3). See also *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005) at ¶ 58 ("Guidelines Order") (recommending that states apply the same minimum eligibility requirements when evaluating requests for ETC designation).



requirements applicable to the support that it receives, that it will be capable of remaining functional in emergency situations, and it has committed to comply with applicable consumer protection and service quality standards.

VTel Wireless has made no commitment in this proceeding regarding the requirement that it file a five-year plan that describes with specificity the proposed improvements or upgrades to its network throughout the proposed service area. However, in Docket 7890, VTel Wireless was subject to a condition that it file such a plan,<sup>46</sup> and on November 6, 2012, VTel Wireless complied with that condition. In the event there have been no updates or modifications to the plan filed in Docket 7890, I see no benefit from requiring VTel Wireless to refile the same plan in this Docket and recommend instead that the Board require VTel Wireless to certify that there have been no changes to that plan. If, however, the plan has been updated or modified in any way, I recommend that the Board require VTel Wireless to file, within 60 days of the date of this Order, a new five-year plan that describes with specificity the proposed improvements or upgrades to its network throughout the proposed service area consistent with the requirements of 47 C.F.R. § 54.202(a)(1)(ii).

#### **XI. PUBLIC INTEREST**

Prior to designating a competitive telecommunications carrier as an ETC the Board must first determine that such designation is "consistent with the public interest, convenience and necessity." In a 2005 order, the FCC interpreted this requirement to mean that designation must serve the public interest, and established an analytical framework it would use in reviewing ETC applications to ensure designations were in fact in the public interest and encouraged states to implement the same requirements and analytical framework in determining whether to designate a carrier as an ETC when applications are reviewed by state commissions.<sup>47</sup>

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46. See Docket 7890, Order of 7/11/12 at 13.

47. Guidelines Order at ¶¶ 1, 3 and 4. As discussed earlier, the FCC also implemented strengthened annual reporting requirements for all ETCs except those that solely receive Mobility Fund Phase I support. Carriers receiving only Mobility Fund Phase I support are subject to reporting requirements specific to that program.

In its 2005 Guidelines order, the FCC stated that in examining whether an ETC designation would serve the public interest, it engages in a fact-specific analysis that examines a variety of factors, including potential benefits from increased consumer choice, and the unique advantages and disadvantages of the applicant's service offerings.<sup>48</sup> In making its public-interest determination, the FCC also considers any impacts that a designation would have to the high-cost support fund.<sup>49</sup>

### Findings

42. Expansion and upgrade of VTel Wireless' network will offer increased consumer choices and competition for some customers. Guite pf. at 8.

43. Deployment of mobile wireless infrastructure in order to provide mobile voice and broadband service to unserved areas of Vermont would benefit consumers and is in the public interest. Guite pf. at 8.

44. The designation of VTel Wireless will not reduce the amount of high-cost universal service support other carriers in Vermont currently receive, but will add one additional wireless provider to enhance, augment and support the services now offered by several existing statewide providers. Guite pf. at 8.

45. Other wireline and wireless companies will be able to use VTel Wireless' network. Guite pf. at 9-10.

### Discussion

The State has recognized that mobile telecommunications and broadband services are "essential for promoting the economic development of the state, the education of its young people and lifelong learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life."<sup>50</sup> In light of this, the State has established as goals that all residences and businesses in all regions of the state have access to

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48. Guidelines Order at ¶ 41. The FCC also engages in a "cream-skimming" analysis in certain situations, none of which are applicable to VTel Wireless' petition.

49. Guidelines Order at ¶¶ 54-57.

50. 30 V.S.A. § 8060(a)(1).

affordable broadband services not later than the end of 2013, and that there be universal availability of mobile telecommunication services, including voice and high-speed data, along roadways, and near universal availability statewide by the end of 2013.<sup>51</sup> Designation of VTel Wireless as an ETC so that it may access the Mobility Fund Phase I support will assist the State in meeting these policy goals because it will result in the deployment of infrastructure capable of providing mobile voice and broadband services to unserved and underserved areas of Vermont and will therefore promote the public good.

This public good determination is reinforced by the access that other telecommunications providers will have to VTel Wireless' network,<sup>52</sup> and the fact that the designation will not reduce the amount of high-cost support that will be received by Vermont's other ETCs.

Fairpoint filed comments in response to the consensus PFD supported by VTel Wireless and the Department. Fairpoint recommends that VTel Wireless be required to offer non-discriminatory access to its network and that VTel Wireless offer wholesale discounts to its retail service using the same discount rate that Fairpoint uses in pricing its services for resale.<sup>53</sup>

VTel Wireless opposes the conditions requested by Fairpoint. According to VTel Wireless, the Board should not impose any conditions on its designation beyond those listed in the Stipulation between it and the Department, including those imposed on VTel Wireless in Docket 7890, stating that imposing such conditions "simply because such conditions have been imposed by the Board in the past" would not be "an appropriate course for the Board to take."<sup>54</sup> VTel Wireless also contends that Fairpoint's proposed condition regarding wholesale discounts to

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51. 30 V.S.A. § 8060(b)(1) & (2).

52. In granting VTel Wireless conditional ETC designation so the company could participate in the Mobility Fund Phase I auction, the Board imposed a number of conditions intended to promote the public good, including access to the VTel Wireless network by other carriers. See Docket 7890, Order of 7/11/12 at 12-14. With some revisions to reflect the fact that VTel Wireless has already complied with some of the conditions imposed in that Docket, I recommend that the Board impose the same conditions in this proceeding.

53. Letter from M. Beth Fastiggi, Fairpoint Vice President, to Susan M. Hudson, Clerk of the Board, dated August 7, 2013.

54. Letter from Nancy S. Malmquist, Esq., to Susan M. Hudson, Clerk of the Board, dated August 19, 2013, at 2 ("August 19 letter").



VTel Wireless' retail services is without policy or legal support.<sup>55</sup> Lastly, VTel Wireless asserts that non-discriminatory access to its network as proposed by Fairpoint cannot be reconciled with VTel Wireless' obligations under the FCC's rules related to the Mobility Fund Phase I program, which require only that VTel Wireless provide for reasonable collocation by other providers of mobile voice telephony services and compliance with the FCC's voice and data roaming requirements.<sup>56</sup>

First, I recommend that the Board reject Fairpoint's recommended condition that would require VTel Wireless to offer wholesale discounts to its retail service offerings. VTel Wireless is correct that there is no legal obligation for it to offer such discounts and Fairpoint provides no explanation that would warrant adoption of its proposed condition by the Board.

Second, I recommend that the Board continue to impose the non-discriminatory access requirement that it imposed on VTel Wireless' conditional ETC designation in Docket 7890. The Board made a determination in that proceeding that such access was in the public interest and VTel Wireless provides no justification for why that is no longer the case. Additionally, the position taken by VTel Wireless in its response to Fairpoint's comments, that it should only be required to offer reasonable collocation to other providers of mobile services, runs counter to the testimony of the Company's witness in support of the Company's public interest analysis which specifically states that both wireless and wireline companies would be provided access to the VTel Wireless network.<sup>57</sup>

Lastly, the Board has imposed numerous conditions in recent ETC designation Orders, many of which are relevant to promoting the public interest in this matter as well. VTel Wireless has provided no substantive explanation for why such conditions should not be brought to bear on the requested designation and I therefore recommend that the Board impose a number of those conditions here, which will be specified in the proposed Order below.

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55. August 19 letter at 1-2.

56. August 19 letter at 2-3.

57. Guite pf. at 9-10.

## **XII. THE STIPULATION**

### **Findings**

46. On April 18, 2013, VTel Wireless filed with the Board a Stipulation setting forth agreements reached between VTel Wireless and the Department regarding this Docket.

Stipulation generally.

47. The parties to the Stipulation – VTel Wireless and the Department – agree that the Board should designate VTel Wireless as an ETC in the areas in which VTel Wireless was awarded Mobility Fund Phase I support. Stipulation at 2.

48. The Stipulation includes a number of conditions with which VTel Wireless must comply. Stipulation at 2-4.

### **Discussion**

I recommend that the Board accept the Stipulation and incorporate into its Order the various terms and conditions of the Stipulation that impose obligations on VTel Wireless, except to the extent that they have been modified herein. Incorporation of these terms and conditions will help ensure that designation of VTel Wireless serves the public interest and gives the parties and the Board certainty about what is expected of VTel Wireless and how its ETC designation will be handled going forward.

## **XIII. CONCLUSION**

Based on the preceding findings and discussion, I conclude that VTel Wireless, subject to certain conditions, satisfies the federal and Vermont requirements for designation as an ETC in the areas for which VTel Wireless was awarded Mobility Fund Phase I support. I also conclude that VTel Wireless' compliance with the conditions described in this PFD will ensure the designation meets the public interest standard.

VTel Wireless and the Department have indicated their intention to waive their rights under 3 V.S.A. § 811 to review and comment on the Hearing Officer's PFD provided the Board adopts an Order and findings substantially similar to the consensus PFD filed by VTel Wireless